

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 122012-001

**The Guardian Life Insurance Company
of America
Respondent**

**Issued and entered
this 7th day of December 2011
by R. Kevin Clinton
Commissioner**

ORDER

I. PROCEDURAL BACKGROUND

On June 22, 2011, XXXXX, DDS, authorized representative of XXXXX (Petitioner), filed a request with the Commissioner of Financial and Insurance Regulation for an external review under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* After a preliminary review of the material submitted, the Commissioner accepted the case for external review on June 29, 2011.

The Commissioner notified The Guardian Life Insurance Company of America (Guardian) of the external review and requested the information used in making its adverse determination.

Because medical issues are involved, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendation on July 13, 2011.

II. FACTUAL BACKGROUND

The Petitioner is covered under a group dental plan that is underwritten by Guardian. Her benefits are defined in a plan benefit document that serves as a certificate of coverage (the certificate).

On March 23, 2011, the Petitioner had a crown placed on tooth #19. The charge for the crown was \$867.00. Guardian denied coverage for the crown but covered a two surface amalgam as an alternate benefit.

The Petitioner appealed Guardian's decision through its internal grievance procedure. Guardian upheld its determination and issued its final adverse determination dated June 10, 2011.

III. ISSUE

Did Guardian correctly deny coverage for Petitioner's crown?

IV. ANALYSIS

Petitioner's Argument

The Petitioner argues that Guardian should cover the crown she received on tooth #19 because it was dentally necessary. The Petitioner's dentist explained the need for the crown in an undated letter submitted with the request for external review:

[The Petitioner] was first seen in our office in May 2007. A diagnosis of severe Bruxism was made and a U of M Splint completed in November 2007. The patient does not wear the appliance regularly as noted our charts. As a 54 year old Bruxism patient, with large occlusal amalgams in her molars, it is my experience that there is a very high percentage of these molars that fracture. #19 had a large (not deep) amalgam spanning more than 2/3 of the occlusal isthmus. The Distal Lingual cusp fractured and required a crown. This treatment is the standard of care for this situation.

Respondent's Argument

In its final adverse determination of June 9, 2011, Guardian advised the Petitioner its reason for denying coverage for a crown:

On 05/20/11 your claim for the crown on tooth #19 performed on 3/23/10, was received. Coverage for these services was denied. A licensed dentist has reviewed the clinical information submitted and determined that this tooth does not appear to have decay or injury that would require a crown, inlay, onlay or veneer. We have considered the charge for a two surface amalgam. The dental plan only covers crowns, inlays, onlays and veneers when needed due to decay or injury and when the tooth cannot be restored with a routine filling. . . .

Guardian further explained its decision in a letter dated June 23, 2011, submitted in response to the external review request:

Based on review of the clinical information provided, in the initial claim review a consultant advised that tooth 19 did not appear to have decay or injury. In keeping with plan provisions, Guardian processed the claim denying coverage of the crown in an explanation of benefits statement issued on 4/21/11.

... Based on an appeal review of the additional information provided, a second consultant was unable to establish proof of loss in support of substantial decay or injury for tooth 19; an alternate treatment of a routine restoration were [*sic*] recommended. Guardian processed the claim on 6/10/11 reflecting coverage of an alternative treatment for the crown on tooth 19; a \$158.40 benefit was issued payable to [the Petitioner's dentist].

The certificate's alternate treatment provision states (p. 25):

If more than one type of service can be used to treat a dental condition, *we* have the right to base benefits on the least expensive service which is within the range of professionally accepted standards of dental practice as determined by *us*. . . .

Applying the alternate treatment provision, Guardian covered the equivalent of a two-surface amalgam restoration for tooth #19 instead of a crown. Guardian approved \$198.00 for that procedure and, after applying 20% coinsurance, paid \$158.40 to the Petitioner's dentist.

Commissioner's Review

The question of whether it was medically (i.e., dentally) necessary to place a crown on tooth #19 was presented to an independent review organization (IRO). The IRO practitioner assigned to this case is a dentist consultant who has been in practice for more than 18 years. The dental consultant examined x-rays, dental records, and all documentation presented by both parties. The IRO report concluded:

The MAXIMUS independent dentist consultant, who is familiar with the medical management of patients with the member's condition, has examined the medical record and the arguments presented by the parties.

The results of the MAXIMUS dentist consultant's review indicate that this case involves a 54 year-old female who has a history of bruxism. At issue in this appeal is whether the crown that the member received for tooth #19 on 3/23/11 was medically necessary for treatment of her condition.

The MAXIMUS dentist consultant noted that the x-rays provided for review demonstrate that tooth #19 had an existing one surface occlusal restoration. The MAXIMUS dentist consultant indicated that there was no observable evidence of

recurrent decay or fracture of the distal cusps on this x-ray. The MAXIMUS dentist consultant explained that the radiographic evidence shows that tooth #19 could have been restored adequately with a 2 surface filling because of the minimal surface involvement of the previous restoration and the significant amount of tooth structure available.

Pursuant to the information set forth above and available documentation, the MAXIMUS dentist consultant determined that the crown that the member received for tooth #19 on 3/23/11 was not medically necessary for treatment of her condition.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, a recommendation from the IRO is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO's analysis is based on experience, expertise, and professional judgment and the Commissioner can discern no reason why the IRO's recommendation should be rejected in the present case.

The Commissioner finds that Guardian's denial of coverage for a crown on tooth #19 and its coverage of an amalgam restoration as an alternate treatment were appropriate.

V. ORDER

The Commissioner upholds The Guardian Life Insurance Company of America's June 10, 2011, final adverse determination. Guardian is not responsible for providing coverage for a crown on tooth #19.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner